

Federal Communications CommissionD.402-3477

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 18 2002

In the Matter of

Verizon Petitions for
Limited Modifications of LATA
Boundary to Provide Expanded Local
Calling Service (ELCS)

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WC Docket No. 96-159

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2002

Released: December 17, 2002

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On July 5, 2002, Verizon Virginia (Verizon), pursuant to section 3(25) of the Communications Act of 1934, as amended,¹ filed four petitions to provide two-way, flat-rated, non-optional, expanded local calling service (ELCS) between the Catoctin, Virginia exchange and various other exchanges in Virginia.² Verizon's petitions request limited modification of local access and transport area (LATA) boundaries.³ Because the Catoctin exchange is central to the four petitions, we will consolidate the petitions as one request for LATA boundary modifications between Catoctin and the other affected exchanges. For the reasons stated below, we grant Verizon's request.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by a state commission.⁴ Under section 3(25)(B) of the

¹ See 47 U.S.C. § 153(25).

² See Comment Sought on Verizon Bell Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in Virginia, WC Docket No. 96-159, Public Notice, DA Nu. 02-1594 (rel. July 5, 2002). ELCS is requested between the following exchanges: Catoctin and Arlington/Alexandria (Verizon Arlington/Alexandria Petition); Catoctin and Falls Church/McLean (Verizon Falls Church/McLean Petition); Catoctin and Fairfax/Vienna (Verizon Fairfax/Vienna Petition); and Catoctin and Herndon (Verizon Herndon Petition).

³ Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the Telecommunications Act of 1996 by a Bell Operating Company (BOC), as permitted under the AT&T Consent Decree, or "established or modified by a BOC after such date of enactment, and approved by the Commission." 47 U.S.C. § 153(25).

⁴ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at

Act, requests for interLATA ELCS routes fall within the Commission's exclusive jurisdiction over the modification of LATA boundaries.' Applying a two-part test, the Commission will grant a request for an ELCS LATA modification where a petitioning BOC shows that the proposed modification is justified by a significant community of interest among the affected exchanges, and that the grant of the requested waiver will not have any anticompetitive effects.⁶ A BOC is deemed to have made a *prima facie* case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (*i.e.*, flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.'

3. The Verizon request seeks to establish two-way, flat-rated, non-optional ELCS, and is accompanied by: an order issued by the Virginia State Corporation Commission (Virginia Commission) approving the ELCS request on the basis that a sufficient community of interest exists to warrant such service; a statement that only traditional local service is proposed; poll results demonstrating that a community of interest exists among the respective exchanges;⁸ and a statement of the number of access lines involved.' On July 15, 2002, Cavalier Telephone (Cavalier) filed comments regarding the Verizon request, in which it argues that because Verizon will not lower unbundled network element rates by reclassifying the Bethia, Virginia central office from density zone three to density zone one, Verizon should not be afforded regulatory flexibility to modify LATA boundaries."

which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona, Memorandum Opinion and Order, 14 FCC Rcd. 14,392, 11,399 (1999).

⁶ *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.* at 10657-58. See also *Application for Review of Petition for Modification of LATA Boundary*, FCC 02-233, Order on Review, 17 FCC Rcd 16952 (2002).

id. at 10659

⁸ 68 percent of Catoclin customers returning ballots voted in favor of ELCS. See Verizon Arlington/Alexandria Petition at 3; Veriron Falls Church/McLean Petition at 3; Verizon Fairfax/Vienna Petition at 3; Verizon Herndon Petition at 3.

The Catoclin exchange has 6,182 access lines. The Arlington/Alexandria exchange has 443,170 access lines, the Falls Church/McLean exchange has 298,097 access lines, the Fairfax/Vienna has 194,929 access lines, and the Herndon exchange has 97,886 access lines. See Verizon Arlington/Alexandria Petition at 2; Verizon Falls Church/McLean Petition at 2; Veriron Fairfax/Vienna Petition at 2; Verizon Herndon Petition at 2.

¹⁰ Cavalier Comments at 1-3

11. DISCUSSION

4. We conclude that Verizon has made its *prima facie* case, that its request satisfies the criteria established by Commission precedent, and that the LATA boundary modifications should accordingly be granted. Applying the first part of the two-part test, we find that Verizon has shown that a community of interest exists among the affected exchanges. As we discuss *supra*, the Virginia Commission undertook an analysis, which included examining customer polling data, to find that a sufficient community of interest existed to justify a LATA boundary modification.¹¹ Further, many of the medical facilities, physicians, major repair and supply services, and places of employment used by the residents of Catoctin are located in the Arlington/Alexandria, Falls Church/McLean, Fairfax/Vienna, and Herndon exchanges.¹² Verizon also proposes offering two-way, flat-rated, non-optional local service, a further indicator that a community of interest exists.

5. Applying the second part of the two-part test, we find that granting the petition would have a minimal effect upon competition because the proposed ELCS primarily would affect only the small number of access lines in the Catoctin exchange.¹³ Most significantly, however, Verizon has opened its market to competition in Virginia and, accordingly, has been granted authority to offer long distance service in that state.¹⁴ As a result, we believe that granting Verizon's request serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve Verizon's request for limited LATA modifications to provide two-way, flat-rated, non-optional ELCS.¹⁵

6. We grant this relief solely for the limited purpose of allowing Verizon to provide ELCS between the specific exchanges or geographic areas identified in the request. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, flat-rated, non-optional ELCS between the

¹¹ See *supra* para. 3, n.8

¹² See Verizon Arlington/Alexandria Petition at 3; Verizon Falls Church/McLean Petition at 3; Verizon Fairfax/Vienna Petition at 3; Verizon Herndon Petition at 3.

¹³ See *supra* n.9. In assessing the number of lines affected by this request, we note that, because most of the services and facilities used by Catoctin's residents are outside the Catoctin exchange, the great majority of calls will be made from the Catoctin exchange into the Arlington/Alexandria, Falls Church/McLean, Fairfax/Vienna, and Herndon exchanges. Accordingly, for the purposes of this request, the access lines we consider are the 6,182 lines in Catoctin.

¹⁴ Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia, CC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297 (rel. October 30, 2002) (*Verizon Virginia Order*).

¹⁵ We do not address Cavalier's contention regarding the Bethia wire center. As the Commission stated in the *Verizon Virginia Order*, the Virginia Commission has declined to require a reclassification of the Bethia wire center and there is no evidence in the record that gives us reason to disturb the Virginia Commission's exercise of its expertise and reasoned judgment in this matter. *Id.*

specified exchanges will be treated as intraLATA service, and the provisions of the Act governing intraLATA service will apply.¹⁶ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will **apply**.

VI. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, ~~as~~ amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Verizon for LATA modifications for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in WC Docket No. 96-159, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Division

¹⁶ The BOC may provide ELCS service without meeting the section 271 requirements, *see* 47 U.S.C. § 271(a), and a separate affiliate is not required, *see* 47 U.S.C. § 272(a)(2)(B).